

BURNHAM BROWN  
Dean Pollack State Bar No. 176440  
Rohit A. Sabnis, State Bar No. 221465  
1901 Harrison Street, 14<sup>th</sup> Floor  
Oakland, CA 94612  
Telephone: (510) 444-6800  
Facsimile: (510) 835-6666  
E-Mail address: dpollack@burnhambrown.com  
rsabnis@burnhambrown.com

HERZOG CREBS LLP  
Peter W. Herzog, *Pro Hac Vice*  
Michael A. Vitale, *Pro Hac Vice*  
100 North Broadway, 14<sup>th</sup> Floor  
St. Louis, MO 63102  
Telephone: (314) 231-6700  
Facsimile: (314) 231-4656  
E-Mail address: pwh@herzogcrebs.com  
mav@herzogcrebs.com

Attorneys for Defendant/Counter-Claimant  
HANDI-CRAFT COMPANY

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

WHITTLESTONE, INC., a California  
corporation,

Plaintiff,

v.

HANDI-CRAFT COMPANY, a Missouri  
corporation,

Defendants.

No. CV 08-04193 SBA

Assigned to the Hon. Sandra B.  
Armstrong, Courtroom 3

**STIPULATION AND ORDER TO  
MODIFY ORDER FOR PRE-TRIAL  
PREPARATION TO ALLOW FILING  
OF FIRST AMENDED ANSWER TO  
SECOND AMENDED COMPLAINT  
AND FIRST AMENDED COUNTER-  
CLAIM**

Action Filed: September 4, 2008

HANDI-CRAFT COMPANY,  
                                 Counter-Claimant,  
     v.  
 WHITTLESTONE, INC.,  
                                 Counter-Defendant.

Pursuant to Civil Local Rules 7-1(a)(5) and 7-12 and Federal Rules of Civil Procedure (“FRCP”) 16(b)(4), Plaintiff Whittlestone, Inc. (“Whittlestone”) and Defendant Handi-Craft Company (“Handi-Craft”), by and through their counsel, hereby stipulate to the following:

**WHEREAS** the Court entered an Order for Pre-Trial Preparation on May 20, 2011. The deadline for amending the pleadings, as established by such Order, was June 8, 2011.

**WHEREAS** Handi-Craft represents that on July 8, 2011 it acquired from a third party various e-mails exchanged between a resident of the United Kingdom and the principal of Whittlestone.

**WHEREAS** Handi-Craft believes that the communications in the above e-mails provide it with facts supporting an affirmative defense of fraud in the inducement as to the claims made in Plaintiff’s Second Amended Complaint. Handi-Craft also believes that the e-mails provide it with facts supporting a cause of action against Whittlestone for fraud in the inducement.

**WHEREAS** Handi-Craft represents that, prior to July 8, 2011, it was not in possession of the above e-mails and did not know they existed. In addition, Handi-Craft represents that it was not, prior to July 8, 2011, otherwise aware of the facts contained in the e-mails nor was it

in possession of documents or other information that would have permitted it to ascertain facts in support of its claim for fraud in the inducement at any time before July 8, 2011.

**WHEREAS** Handi-Craft prepared a [Proposed] First Amended Answer to Second Amended Complaint and First Amended Counter-Claim containing both an affirmative defense and cause of action for fraud in the inducement and forwarded it to counsel for Whittlestone on July 29, 2011.

**WHEREAS** on August 2, 2011, Handi-Craft received correspondence from counsel for Whittlestone requesting that Handi-Craft provide Whittlestone with facts supporting good cause for modifying the Order for Pretrial Preparation and permitting the filing of its proposed amended answer and counter-claim. Handi-Craft responded to Whittlestone's request on August 5, 2011. Whittlestone agreed to stipulate to the filing of Handi-Craft's proposed amended answer and counter-claim on August 8, 2011.

**WHEREAS** Handi-Craft asserts that good cause exists for the relief requested by way of this stipulation.

Accordingly, Handi-Craft respectfully requests an Order from the Court as follows:

1. That the May 20, 2011 Order for Pretrial Preparation be modified to allow Handi-Craft to file its First Amended Answer to Second Amended Complaint and First Amended Counter-Claim, attached hereto as Exhibit A, no later than 7 days following notice of the Court's execution of an Order pursuant to this Stipulation.

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MORGAN, FRANICH, FREDKIN &amp; MARSH

Dated: August 19, 2011

By: \_\_\_\_\_  
David A. Kays  
Attorneys for Plaintiff/Counter-Defendant  
WHITTLESTONE, INC.

DATED: August 19, 2011

BURNHAM BROWN  
HERZOG CREBS LLP

By \_\_\_\_\_  
 ROHIT A. SABNIS  
 Attorneys for Defendant/Counter-  
 HANDI-CRAFT COMPANY

## ORDER

**PURSUANT TO STIPULATION, IT IS SO ORDERED.**

DATED: August 30, 2011

*Saundra B. Armstrong*  
HON. SAUNDRA B. ARMSTRONG  
UNITED STATES DISTRICT COURT JUDGE

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